

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2020-002

TO: Mayor John Engen, City Council, Judge Kathleen Jenks, Dale Bickell, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Leigh Griffing, Ellen Buchanan, Kathy Crego, Eran Pehan, Donna Gaukler, Jeremy Keene, Dennis Bowman, Mike Brady, Jeff Brandt, Mike Colyer

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE January 8, 2020

RE: Elected and appointed municipal officers shall take the oath of office provided in Article III, section 3 of the Montana Constitution. No other declaration shall be required as a qualification for any office of public trust.

FACTS:

Since the Monday noon, January 6, 2020 taking of the oath of office by the six recently elected city council members, there have been some discussion inquiries as to whether the oath taken by City of Missoula elected and appointed officers should include reference to the city charter.

ISSUE(S):

What does Montana municipal state law provide with respect to the oath of office taken by every elected and appointed municipal officer in Montana?

CONCLUSION(S):

Montana municipal state law pursuant to section 7-1-4137 MCA states that every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3 of the Montana Constitution. It is also noteworthy that Article III, section 3 of the Montana Constitution after setting forth the required oath of office, states “No other oath, declaration, or test shall be required as a qualification for any office or public trust.

LEGAL DISCUSSION:

Title 7, chapter 1, part 41 MCA is entitled “MUNICIPALITIES”. Section 7-1-4137 MCA of these state Montana municipal laws states as follows:

“7-1-4137. OATH OF OFFICE. (1) Every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3, Montana Constitution. Before the officer performs any official duties, the oath of office, certified by the official before whom the oath was taken, must be filed. An elected officer shall file the oath with the county election administrator. Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator.”

The Montana Constitution is a higher authority with greater legal weight than Montana state law. Article III, section 3 of the Montana Constitution provides as follows:

“Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: ‘I DO SOLEMNLY SWEAR (AFFIRM) THAT I WILL SUPPORT, PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES, AND THE CONSTITUTION OF THE STATE OF MONTANA, AND THAT I WILL DISCHARGE THE DUTIES OF MY OFFICE WITH FIDELITY (SO HELP ME GOD). No other declaration or test shall be required as a qualification for any office or public trust.’”(emphasis added)

As previously noted herein section 7-1-4137 MCA explicitly requires that the above quoted Montana Constitutional oath of office is the oath of office that every municipal elected and appointed officer must take prior to commencing performance of their respective duties of office.

Article III, section 3 of the Montana Constitution expressly states that “NO OTHER OATH, DECLARATION, OR TEST SHALL BE REQUIRED AS A QUALIFICATION FOR ANY OFFICE OR PUBLIC TRUST.”(emphasis added)

Section 7-1-114 MCA pertaining to self-government local governments is entitled “MANDATORY PROVISIONS”. Subsection 7-1-114(1)(d) MCA statutorily makes it mandatory that a local government with self-government powers is subject to “(d) all laws regulating the election of local officials.”

A Montana municipality may not legally mandate that their respective elected and appointed officials must take an oath of office that includes reference to their local government self-government charter. If the Montana local government attempted to include such a charter reference, the local government would be powerless to deny any elected officer the office they were elected to.

CONCLUSION(S):

Montana municipal state law pursuant to section 7-1-4137 MCA states that every elected and appointed municipal officer shall take the oath of office prescribed in Article III, section 3 of the Montana Constitution. It is also noteworthy that Article III, section 3 of the Montana

Constitution after setting forth the required oath of office, states “No other oath, declaration, or test shall be required as a qualification for any office or public trust.

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/s/

Jim Nugent, City Attorney

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